

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 142 OF 1994

The State of Maharashtra
(At the instance of J.L
Lande, Food Inspector,
C/o. Joint Commissioner,
Gr. Bombay)

...Appellant.

V/s

Bhimashankar Chaturbhuj Mehta
(Proprietor) of
M/s. Eshwar Dairy
Shop No. 127, VIC Chawl,
90 Ft. Road, Dharavi,
Bombay - 400 017.

...Respondent.

Mr. A.S. Shitole, APP for the appellant - State.

None for the respondent.

CORAM: V.M.KANADE,J.
DATE: 22nd February, 2005

ORAL JUDGMENT:

1. Appellant is the original complainant who filed complaint against the respondent under the various provisions of the Prevention of Food Adulteration Act. The Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Bombay by his Judgment and Order dated 01/09/1993 in C.C. No. 308/S of 1989 was pleased to acquit the accused. Appellant is challenging the said judgment and order.

FACTS:

2. Appellant filed complaint against the accused who was carrying on business of selling dairy products in their shop at Dharavi. The complainant visited the shop premises of the accused on 17/7/1986 at about 4.00 p.m., purchased 660 ml. of Buffalo milk from the Aluminium Can, paid the accused the cost of the milk which was purchased. Thereafter, he divided the milk in three equal parts and put it in three glass bottles and after sealing these bottles sent the sample to the Public Analyst. After receipt of the adverse report, he obtained the sanction from the Commissioner to prosecute the accused and, thereafter, filed a complaint.

3. The prosecution examined Shri Ravindra Chitnis who was working as clerk in LHA as P.W.1, Shri Narsingha Deshpande, a retired Joint Commissioner who granted sanction to prosecute the accused as P.W.2 and Shri Janardan Lande as P.W.3 who was the Food Inspector when the complainant had filed complaint in this case.

4. The Trial Court acquitted the accused on the ground that there was no evidence on record to show that the Food Inspector had strictly followed the

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procedure laid down under Rules 14 to 18 of the said Rules and also on the ground that the mandatory provision of section 13(2) of the Act was not followed and further on the ground that P.W. 2 - Narsingha Deshpande who had granted sanction under section 20 of the Act was not appointed as Joint Commissioner but was, admittedly, holding the charge of the Joint Commissioner and even the fact that he was holding the charge of the Joint Commissioner was not notified in the Government Gazette.

5. I have heard the learned APP appearing on behalf of the State. None present for respondent.

FINDINGS:

6. I have perused the evidence of the three witnesses and it does appear that the mandatory provision of section 13(2) of the Act had not been followed and a copy of the Public Analyst's report was not given to the accused after the complaint was filed by the complainant. P.W. 1 in his cross-examination has admitted that the letter under which the Public Analyst report was sent to the accused had returned undelivered and he had informed this fact to the Food Inspector. However, the Food Inspector had not taken

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any steps to furnish a copy of the Public Analyst Report to the accused. In my view this lacuna itself is fatal to the prosecution case as the mandatory provision of section 13(2) of the Act had not been followed. Apart from that, I have perused the judgment and order of the Trial Court and I find that the Trial Court had given clear and cogent reasons before recording the findings on various aspects of the case. I do not see any reason, therefore, to interfere with the findings recorded by the Trial Court.

7. Appeal is accordingly dismissed.

(V.M. KANADE, J.)